



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

AUG - 5 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 0640 0007 6347 5223

Mr. Juan Dominguez, Racing Facilities Coordinator
New York Racing Association, Inc.
2150 Hempstead Turnpike
Elmont, New York 11003

Re: **Administrative Docket No. CWA-02-2015-3067**
Aqueduct Racetrack, 110-00 Rockaway Boulevard, Ozone Park, New York
SPDES Permit No. NYA001419
Clean Water Act Information Request and Administrative Compliance Order

Dear Mr. Dominguez:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that New York Racing Association, Inc. ("Respondent") is in violation of the Clean Water Act (33 U.S.C. § 1251 et seq.) ("CWA" or "Act") for its failure to comply with the terms and conditions of the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). Enclosed is an Information Request and Administrative Compliance Order (together the "Order"), Docket No. CWA-02-2015-3067, issued pursuant to Sections 308 and 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing the acknowledgment page and returning the acknowledgment page by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on June 9, 2015. If you have any questions regarding the enclosed Order, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section, at (212) 637-4268.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC
Robert Elburn, Regional Water Engineer, NYSDEC Region 2

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

New York Racing Association, Inc.
110-00 Rockaway Boulevard
Ozone Park, New York 11420

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a)

RESPONDENT

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2015-3067

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the "Order") is issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued by the NYSDEC to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. 40 C.F.R. § 122.23 establishes requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.
4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.

5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a large CAFO or medium CAFO.
11. A "large CAFO" is defined by 40 C.F.R. § 122.23(b)(4)(vi) as an animal feeding operation that stables or confines as many as or more than 500 horses.
12. A "medium CAFO" is defined by 40 C.F.R. § 122.23(b)(6)(i)(F) as an animal feeding operation that stables or confines within the range of 150 to 499 horses.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
14. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among

other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.

16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. The New York Racing Association (“Respondent”), owns and operates the Aqueduct Racetrack located at 110-00 Rockaway Boulevard in Ozone Park, New York (“Facility”) and Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
2. Respondent is a “person,” as that term is defined in Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. The Facility confines and feeds or maintains horses for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
4. The Facility confines approximately 400 horses on-site. Therefore, the Facility is operating as a medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i).
5. Production area runoff, a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), from the Facility discharges to Jamaica Bay, a navigable water of the United States, via the New York City Department of Environmental Protection (“NYCDEP”) and the New York State Department of Transportation (“NYSDOT”) storm sewer systems and associated outfall pipes, “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999, and an expiration date of June 30, 2004.
7. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 (“CAFO General Permit” or “Permit”). GP-04-02 has been administratively extended.
8. On April 29, 2004, Respondent applied for coverage and received coverage under the CAFO General Permit with the authorization No. NYA001419. Respondent has been covered as a Medium CAFO under the conditions and limitations in the permit at all relevant times addressed by the Order.

9. The CAFO General Permit authorizes Respondent to discharge pollutants associated with stormwater from Facility to waters of the United States, under the conditions and limitations prescribed in the permit.
10. On June 9, 2015, the EPA conducted an inspection of the Respondent's Facility.
11. Based on the inspection findings, the EPA finds that the Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section VI.A of the CAFO General Permit prohibits the discharge of process wastewater from CAFOs to waters of the State, except in accordance with Section VI.C (25 year-24 hour storm event). The CAFO General Permit defines process wastewater to include precipitation when it comes into contact with any area where organic materials are stored, fed, or wasted. Section VIII.C.xi of the CAFO General Permit states that "[c]ollection, storage and disposal of liquid and solid waste should be managed in accordance with NRCS standards." At the time of the inspection, EPA inspector McEathron identified the following sources of process wastewater discharges to the storm sewer system located on North Conduit Avenue, in violation of Sections VI.A, VII.A and VIII.A.xi of the CAFO General Permit:
 - i. Horse wash water containing detergent, manure, bedding and feed from the wash pad area south of Barn 11;
 - ii. Horse wash water containing detergent, manure, bedding and feed from the sixty (60) wash areas and associated drains located around the perimeters of the thirteen (13) barns;
 - iii. Straw and manure bins with material spilled outside of the bin, specifically at Barn 2; and
 - iv. Barn entranceways where material has tracked and migrated outside, specifically at Barn 2.
 - b. Section III.B of the CAFO General Permit states that shop drains are not authorized for discharge under the CAFO General Permit. At the time of the inspection, EPA inspector McEathron identified a floor drain in the vehicle maintenance garage at the Facility which receives vehicle washwater containing detergent and, potentially, manure, feed, bedding and petroleum products. At the time of the inspection, EPA inspector McEathron observed brown water and straw in the catch basin immediately downstream from the garage floor drain. According to Facility representatives and observations at the time of the inspection, the discharges into the floor drain flow into the stormwater pumping station located in the southeast corner of the Facility and then into the storm sewer system located on North Conduit Avenue, in violation of Section III.B of the CAFO General Permit. At the time of the inspection, the Facility did not have coverage under any SPDES permit associated with the identified non-stormwater discharges.
12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern in the enclosed Inspection Report within **sixty (60) calendar days** of receipt of this Order.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Immediately upon receipt of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1, below.
2. Respondent shall complete the following items in accordance with the schedule listed below:

Item	Completion Deadline
a. Cease and desist all unauthorized vehicle and equipment washwater discharges from the maintenance garage to the storm sewer system, as required by Section III.B of the CAFO General Permit.	Immediately
b. Implement immediate short-term measures to reduce and eliminate process wastewater to the storm sewer system from the Facility, including but not limited to the horse washwater, as required by Sections VI.A, VII.A and VIII.A.xi of the CAFO General Permit.	Immediately
c. Submit to EPA for review and approval, with a copy to NYSDEC, a proposed long-term plan with an implementation schedule to eliminate process wastewater discharges to the storm sewer system from the Facility by October 1, 2015. Include the following in the plan: i. An estimate for how much process wastewater was being produced at the Facility prior to implementing any reduction measures; ii. What short-term measures the Facility has already implemented, with supporting documentation including photographs; iii. Proposed disposal options to be implemented eliminating the discharge (storage, hauling,	Within thirty (30) calendar days of receipt

wastewater/stormwater separation and connection to the sanitary sewer); iv. Associated costs with each option; and v. Identify the estimated reduction in process wastewater produced and discharged as a result of implemented practices.	
d. Eliminate process wastewater discharges to the storm sewer system, including but not limited to horse washwater, and required by Sections VI.A, VII.A and VIII.A.xi of the CAFO General Permit.	October 1, 2015
e. Submit to EPA, with a copy to NYSDEC, a signed certification statement that the process wastewater discharges to the storm sewer system have been eliminated per the EPA approved long-term plan and implementation schedule and include photographs documenting measures implemented and costs associated.	October 7, 2015

E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, New York 12233-3506

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

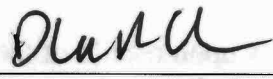
“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. Immediately upon receipt of the original copies of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt, return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.
4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 8/5/15

Signed: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

New York Racing Association, Inc.
110-00 Rockaway Boulevard
Ozone Park, New York 11420

Proceeding pursuant to Sections 308(a) and
309(a) of the Clean Water Act, 33 U.S.C. §§
1318(a) and 1319(a).

RESPONDENT

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2015-3067

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an authorized representative of the Respondent, with
the title of, _____, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2015-3067.

DATE: _____

SIGNED: _____